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No. 84-1137

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INDIANAPOLIS COLTS,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE, and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

EDWIN C. THOMAS, III
(Counsel of Record)
JOHN R. MYERS
DENNIS P.W. JOHNSON
DAVID M. NOVAK
MICHAEL J. ABERNATHY
BELL, BOYD & LLOYD
Three First National Plaza
70 West Madison Street
Suite 3200
Chicago, Illinois 60602
(312) 372-1121

Attorneys for Respondents Mayor and City Council of Baltimore

Dated: February 27, 1985

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QUESTIONS PRESENTED

Whether the federal interpleader statute, 28 U.S.C. § 1335, encompasses an action where the purported claimants seek different stakes, one seeking to acquire the property of plaintiff and the other seeking performance of an unrelated contractual obligation of plaintiff.

Whether the federal interpleader statute, 28 U.S.C. § 1335, encompasses an action where plaintiff has no real fear of vexatious litigation because it has contracted with one claimant to terminate its obligations to that claimant in the event of litigation with a second claimant.

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner's "Statement of the Case" is argumentative, incomplete and inaccurate; it lacks virtually any citation to the record and relies almost exclusively upon legal conclusions proposed by the Club and adopted by the district court as "facts." The Mayor and City Council of Baltimore ("Baltimore")[1] provide the following statement.

A. Factual Background

For more than 30 years, the City of Baltimore has been the home of the Baltimore Colts, a professional football franchise established by the National Football League ("NFL"). The

[1] Baltimore has no parent or subsidiary corporations.

franchise agreement designates Baltimore as the city in which the franchise must play its home games. Since 1953, the team has taken its name from its home city, Baltimore, and Maryland's long tradition of professional horse breeding. Home games of the Colts have been played in Baltimore's Memorial Stadium. The current owner of the franchise is Robert Irsay's Indianapolis Colts, Inc., formerly known as the Baltimore Football Club, Inc. ("Club"). (Complaint, Docketed 4/5/84; Petition for Hearing and Supplemental Restraining Order, Ex. B thereto, Docketed 4/11/84)[2]

During February and March 1984, the Club and the Capital Improvement Board of Managers of Marion County ("CIB") held discussions about moving the Club's operations to Indianapolis, where CIB operates the Hoosier Dome stadium. In those meetings, the Club and CIB negotiated a draft lease agreement for rental of the Hoosier Dome. Because the parties "contemplated" and "recognized" the strong likelihood that Baltimore would file a suit to condemn the Club's franchise, the Club obtained CIB's agreement to various escape clauses in the lease that permit the Club to terminate the lease in the event of one or more contingencies, including the filing of a condemnation suit. (Tr. Vol. II, 2-106-08, 2-112-16)

Upon learning that the Maryland Senate had passed a long-pending bill enabling Baltimore to condemn sports franchises, Irsay decided on March 28, 1984 to attempt to flee the jurisdiction of the Maryland courts by moving the Club's athletic equipment and office supplies out of Maryland. That afternoon, representatives of the Club and CIB signed the lease agreement in Indianapolis, subject to approval by CIB at a public meeting on March 31, 1984. (Tr. Vol. II, 2-11-13, 2-15,

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[2] Unless otherwise noted, references are to the record of the district court. "Tr. Vol." refers to volumes of the transcript of the hearing in the district court on April 18-19, 1984, Docketed 4/23/84 and 4/24/84. "A" refers to petitioner's Appendix filed herein. "Petition" refers to the Club's Petition for Writ of Certiorari filed herein.

2-18-20, 2-114-116, 2-118-119; Tr. Vol. III, 32-33, 37-43) Overnight, the Club moved less than $100,000.00 worth of equipment and supplies out of Maryland. At no time has the Club sought the necessary approval from the NFL to change the designated city of its franchise agreement from Baltimore to Indianapolis. (Tr. Vol. I, I-72-73; Tr. Vol. III, 16) *Cf. Los Angeles Memorial Coliseum Commission* v. *National Football League,* 726 F.2d 1381, 1385 n.1 (9th Cir.), *cert. denied,* 105 S. Ct. 397 (1984).[3]

On March 30, 1984, pursuant to the newly-enacted legislation, Baltimore filed a condemnation suit in Maryland state court to acquire the Club's franchise under the city's sovereign powers of eminent domain. The Maryland court forthwith enjoined the Club from taking any action or inaction to transfer the franchise. (Complaint, Exs. A and B thereto, Docketed 4/5/84)

B. Proceedings Below

Three days after removing the condemnation suit to the federal court in Maryland, the Club filed the instant "interpleader" action in the federal court in Indianapolis on April 5, 1984. Seeking protection of statutory interpleader under 28 U.S.C. § 1335, the Club alleged that it was the stakeholder of an NFL franchise subject to conflicting claims by Baltimore and CIB arising out of the condemnation suit and the lease agreement, respectively. The Club made no mention of the numerous escape clauses in the lease agreement that released it from any liability to CIB under the circumstances then pending. (Complaint, Docketed 4/5/84) On the same day the Club filed

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[3] The by-law *as applied* in the *Los Angeles Memorial Coliseum* case, in which the NFL voted to deny the Oakland Raiders permission to move to Los Angeles where the Raiders would be in direct competition with the Los Angeles Rams, raised antitrust concerns not here applicable.

its Complaint, the district court entered an *ex parte* restraining order against Baltimore ("April 5 Order") which prohibited Baltimore from prosecuting its condemnation suit and from seeking to extend the restraining order in that suit. (Restraining Order and Order Approving Bond, Docketed 4/5/84)

On the next day, April 6, the Club, in a related matter, told the United States Bankruptcy Court for the District of Maryland:

> Now, the relief sought in the [Club's] case pending in Indiana doesn't seek to adjudicate any rights to the property of the alleged debtor [the Club]. It seeks an order declaring that the franchise has been validly relocated from Baltimore to Indianapolis. That is to say, it seeks an order that the business has been moved.

(Appendix of Defendants-Appellants Mayor and City Council of Baltimore, filed June 4, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at A-237)

Baltimore filed an action against the NFL in Maryland state court on April 6 and obtained an order enjoining the NFL from taking any action to aid the possible transfer of the Club's franchise out of Baltimore during the pendency of the condemnation proceeding. After a hearing held on April 18-19, the district court below granted the Club's motion for a supplemental restraining order enjoining Baltimore from prosecuting the NFL suit ("April 19 Order"). (Supplemental Restraining Order, April 19, 1984, Docketed 4/19/84; Tr. Vol. V, 5-3-5-8) Baltimore appealed the April 5 and April 19 Orders pursuant to 28 U.S.C. § 1292(a)(1) and filed an emergency motion in the Court of Appeals for a stay of those orders pending appeal. (Emergency Motion of Defendants-Appellants For Stay and Injunction Pending Appeal, filed April 23, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.))

On May 8, 1984, the Court of Appeals issued an opinion and order granting Baltimore's emergency motion for a stay of the district court's orders. In a seven page opinion for a unanimous panel, Judge Posner concluded that the Club was forum shopping under the ruse of interpleader and stated that it "seems quite likely" that "this suit was brought in bad faith."[4] (A-22) The court stated further:

> [T]he Club appears to have no claim against the City on which a suit of any sort could be founded; it merely wants a stay of the City's eminent-domain suit. It could ask the court in Maryland where the suit is pending for such a stay, of course, but evidently it thinks its request will be more favorably received in Indiana. But it has to get into court in Indiana, and it can do that only by way of the interpleader jurisdiction. We cannot imagine any other motive for this action.
>
> The Colts are in that exceptionally common situation where their ability to perform a contract may be imperiled by a lawsuit; and they just want to shift the lawsuit to their new home ground, by using the interpleader statute to get personal jurisdiction of the plaintiff there, which they could not otherwise get. This is not what the statute was intended for.
>
> * * * *
>
> The fact that the Club filed the present suit and moved to enjoin the City of Baltimore from proceeding with the action in Maryland indicates that, now that the Club has relocated to Indianapolis, it would prefer to proceed in a federal district court there than in Baltimore. But it was not to foster forum shopping that the interpleader jurisdic-

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[4] Although the Club correctly notes that the Court of Appeals issued two written opinions herein (A-1-9, A-17-23), its assertion that the court's first order staying injunctions issued by the district court contained "tentative conclusions . . . not adopted" by the court in its second opinion is incorrect. Both panels concluded that this case does not meet the jurisdictional requirements of 28 U.S.C. § 1335. (A-3-5, 22)

> tion, with its unusual feature of nationwide service of process that forces defendants to defend in jurisdictions where they could not otherwise be sued, was created.

(A-20-21)

On August 10, 1984, the Court of Appeals vacated the district court's April 5 and April 19 Orders and remanded with instructions to dismiss the Club's complaint. The court found that CIB and Baltimore were not asserting conflicting claims to a single stake and that the jurisdictional requirements of 28 U.S.C. § 1335 therefore were not satisfied. Rejecting the Club's assertion that both CIB and Baltimore asserted claims to the Club's franchise, the court found that "Baltimore seeks ownership of the Colts franchise" through eminent domain, whereas CIB seeks the Club's performance of its contractual obligations under the lease agreement. (A-4) The court further held that because the lease agreement "does not give the CIB a present right to buy the Colts, [it] does not raise a claim against the franchise conflicting with Baltimore's claim." (*Id.*)

The court held alternatively that, even if conflicting claims to the same stake did exist, the Club "[does] not face a reasonable danger of multiple liability or vexatious, conflicting claims[.]" (A-3) The court held that any such risk was foreclosed under an "escape" clause in the lease agreement which specifically provided that "the lease obligations [of the Club] will terminate at the Colts' option if the Colts' franchise is acquired by eminent domain." (A-6-7)

The Court of Appeals subsequently voted 6-2 to deny rehearing *en banc.* (Order of October 15, 1984) On November 8, 1984, the district court entered an order dismissing the complaint herein. (Order of November 8, 1984)

SUMMARY OF REASONS FOR DENYING PETITION

The Club contends that the Court of Appeals misconstrued the federal interpleader statute, 28 U.S.C. § 1335, in finding that CIB and Baltimore are not claimants to a single stake. However, the Club does not contest the finding below that CIB does not seek the Club's franchise. CIB seeks only to enforce the Club's contractual obligations under the lease agreement. Baltimore, in contrast, seeks to actually acquire the Club's franchise through its condemnation suit. Because CIB and Baltimore thus seek different stakes, § 1335(a)'s jurisdictional requirement that a single stake be the subject of adverse claims is not satisfied here.

Section 1335(b)'s provision that adverse claims need not be identical or of the same origin does not, as the Club suggests, vitiate the single stake requirement. Section 1335(b) merely modifies § 1335(a); it does not provide an alternative basis of jurisdiction. The formless yearnings of two cities to have NFL football games played in their stadia are not competing claims to a single stake under § 1335(a).

Moreover, the Club admits that it does not seek a complete resolution of the claims alleged. It seeks only to have the Indiana federal court decide preliminary questions of Maryland law governing Baltimore's condemnation powers. Should those questions be resolved in Baltimore's favor, the Club admits the interpleader suit would be at an end. No ultimate resolution of the parties' claims would result, and the purpose of interpleader would be defeated.

Contrary to the Club's assertions, the Seventh Circuit's holding is in complete accord with the holdings of this Court and the other circuits. The Club's strained efforts to reinterpret cases involving conflicting claims to the proceeds of insurance policies merely confirm § 1335(a)'s requirement that such claims address a single identifiable stake. Moreover, this Court held in *State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523 (1967), that § 1335 should not be abused by purported

stakeholders to deprive claimants of their choice of forum. The Court of Appeals correctly recognized that such an improper purpose was the only apparent motive for the Club's complaint herein.

Finally, even if a single stake were the object of both claimants here, the Club is not subject to the risk of double liability or vexatious litigation. In anticipation of Baltimore's condemnation suit, the Club insisted upon numerous escape clauses in its lease agreement with CIB, each of which permits the Club to terminate its obligations to CIB and thereby eliminate any threat of suit by CIB. Notwithstanding its contractual protection from suit by CIB, the Club brought this action alleging it had no such protection and sought to shut down Baltimore's condemnation suit. The Court of Appeals properly rejected the Club's attempts at forum shopping and dismissed the complaint herein for lack of interpleader jurisdiction.

ARGUMENT

I. The Court of Appeals Correctly Applied the Jurisdictional Prerequisites of 28 U.S.C. § 1335

The Club asserts that the Court of Appeals misapplied 28 U.S.C. § 1335 in finding that interpleader jurisdiction is lacking in this case. The Club bases its argument on a misunderstanding of the interrelationship of § 1335(a) and § 1335(b). Section 1335(a) sets forth a jurisdictional requirement that plaintiff allege adverse claims to a *single* stake, whether it be money, property or benefits arising from an oral or written obligation.[5] Section 1335(b) does not alter this requirement; it simply provides that the claims to the single stake need not be of the same character.[6] The Club ignores the requirements of § 1335(a) and contends that § 1335(b) sets forth the only limitation on interpleader jurisdiction. (Petition 12-15)

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[5] 28 U.S.C. § 1335(a) (emphasis added) provides in part:

> (a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if
>
> (1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to *such* money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any *such* obligation. . . .

[6] 28 U.S.C. § 1335(b) provides:

> (b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

Interpleader jurisdiction exists under 28 U.S.C. § 1335(a) only if the claimants are seeking the *same* money, the *same* property, or benefits arising by virtue of the *same* note, bond, certificate, policy, instrument, written obligation, or unwritten obligation. Section 1335(b) does not broaden the concept of a stake. Rather, that provision makes clear that, so long as the claimants are seeking the *same* money, the *same* property, or benefits arising by virtue of the *same* note, bond, certificate, policy, instrument, written obligation, or unwritten obligation, the nature of the claim is irrelevant. Section 1335(a) thus concerns what stake is claimed; § 1335(b) concerns how that particular stake is claimed.

Nothing claimed by CIB arises by virtue of the franchise agreement which establishes Baltimore as the Colts' designated city. Nothing claimed by Baltimore arises by virtue of the lease executed by CIB and the Club. In short, Baltimore and CIB are not claiming to be entitled to the same property or to benefits arising from the same obligation as required by § 1335(a).

The Court of Appeals properly concluded that "CIB and Baltimore do not have conflicting claims over a single stake." (A-3) Baltimore seeks to acquire the franchise; CIB seeks the performance of the Club's contractual obligations under the lease agreement. The Club distorts this plain holding by stating that the court found "*CIB's claim to the Colts' franchise* arose under a lease and *Baltimore's claim to the Colts' franchise* arose by eminent domain. . . ." (Petition 9; emphasis added) The Club contends that CIB and Baltimore are claiming a single stake because both "are seeking the same result—the playing of NFL football games in their respective cities." (Petition 13) This argument perverts § 1335(a) by equating the ultimate "result" desired with the singular fund—money, property, note, bond, policy of insurance or written or oral obligation—which alone constitutes a stake under the statute.

The Club then attempts to ignore § 1335(a) by pretending that "federal jurisdiction is predicated only on the *adversity* of the claims, rather than their origins or identity." (Petition 12; emphasis in original) Thus, the Club argues that § 1335(b) supersedes the prerequisites of § 1335(a). (Petition 12-15) However, the permissive character of the language of 28 U.S.C. § 1335(b) indicates that it is nothing more than a gloss on the requirement of "adverse claimants" set forth in § 1335(a); it does not establish an independent basis for jurisdiction. The courts have consistently noted that § 1335(a) sets forth the threshold requirements for interpleader jurisdiction. *See, e.g., State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523, 526-27 (1967); *Travelers Indemnity Co.* v. *Greyhound Lines, Inc.,* 377 F.2d 325, 326-27 (5th Cir. 1967); *Massachusetts Mutual Life Insurance Co.* v. *Central-Penn National Bank of Philadelphia,* 362 F. Supp. 1398, 1401 (E.D. Pa. 1973).[7] In effect, the Club does not even address the essential jurisdictional issue: whether there is a single stake in this action. In view of the Club's failure to analyze the controlling statutory language, its assertion that the Court of Appeals has thwarted the will of Congress is empty rhetoric.

The Court of Appeals correctly rejected the Club's arguments, holding that a single stake is a prerequisite for an

[7] In determining whether interpleader jurisdiction exists, the courts' overriding concern has been the object of the alleged conflicting claims, that is, with the stake. *Savage* v. *First National Bank & Trust Co. of Tulsa,* 413 F. Supp. 447 (N.D. Okla. 1976); *accord, Gaines* v. *Sunray Oil Co.,* 539 F.2d 1136 (8th Cir. 1976); *American Fidelity Fire Insurance Co.* v. *Construcciones Werl, Inc.,* 407 F. Supp. 164 (D.V.I. 1975); *Trowbridge* v. *Prudential Life Insurance Co. of America,* 322 F. Supp. 190 (S.D.N.Y. 1971); *Frank Briscoe Co.* v. *Albert Pick Co.,* 282 F. Supp. 321 (D.N.J. 1968). The analytical framework adopted by the Court of Appeals is, therefore, rooted in the language of the statute as well as supported by sound precedent.

interpleader action and that this case involves no such stake.[8] The Club does not dispute the court's holdings that Baltimore seeks the NFL franchise itself and that "CIB has no claim to ownership of the franchise." (A-4) Instead, the Club claims that Baltimore's condemnation suit may preclude the Club's performance of its "contractual obligations" under the lease agreement. (Petition 5) On this basis alone, the Club asserts that CIB's demand that the Club perform its contractual obligations constitutes a "claim to the Colt's franchise [which] arose under a lease." (Petition 9) The court disposed of this contention by pointing out the obvious fact that, absent some basis for asserting a present right to acquire the Club, CIB has no claim to the same property which Baltimore seeks to condemn by eminent domain. As the Seventh Circuit observed:

> [CIB] is just a lessor of a stadium. It did not buy the Colts by signing a lease that obligates the Colts to play all their home games in the Board's stadium for 20 years, or for that matter 2000 years. If the Colts' owner breaks the lease, the Board may be able to get damages for breach of contract; [but] it will not be able to take over the football team.

(A-22) Therefore, the court properly ruled that Baltimore and

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[8] The Court of Appeals stated clearly that its main jurisdictional objection was the absence of a single stake: "A basic jurisdictional requirement of statutory interpleader is that there be adverse claimants to a *particular fund. See Libby, McNeill & Libby* v. *City National Bank,* 592 F.2d 504 (9th Cir. 1978). The CIB and Baltimore are not claimants to the *same stake."* (A-3-4; emphasis added) The court addressed the wholly separate issue of adversity only in connection with an argument now apparently abandoned by the Club. (A-4-5) The Club conveniently obliterates by an ellipsis the distinction drawn by the Court of Appeals between the requirement of a single stake and the requirement that the claimants to that stake be adverse. (Petition 11)

the CIB are not claimants to the same stake.[9] (A-4-5)

Moreover, this action does not qualify as interpleader because it does not promise to put to rest the claims before the court. The extraordinary features available to a plaintiff in a legitimate interpleader suit (minimal diversity, nationwide service of process, injunctions against other suits) are provided so that all claims to the money, property, or benefits of the instrument or obligation in question can be resolved in a single proceeding. 28 U.S.C. §§ 1335(a)(1), 2361. If a complaint does not promise resolution of all the asserted claims in a single proceeding, interpleader jurisdiction is improper. *State Farm Fire & Casualty Co.* v. *Tashire, supra,* 386 U.S. at 534.

The Club attempted to avail itself of interpleader's far-reaching procedural devices even though it has admitted that it is not seeking a complete resolution of the alleged claims herein:

> The Colts, of course, would not be asking the District Court to try Baltimore's eminent domain action in federal court. Rather, as pointed out by counsel for the Colts in oral argument, the District Court will determine only

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[9] The Club seeks to divert the Court from the analysis of property interests and instruments required under § 1335(a) and invites it instead to render a decision based on speculation about the future. That is, the Club asserts that any ownership of the franchise by Baltimore as a result of the condemnation suit will be transitory and that Baltimore will ultimately become a lessor of the next owner of the franchise, just like CIB. This reasoning has at least three flaws. First, jurisdiction must be determined by examining present claims rather than future possibilities. *Walker* v. *Pritzker,* 705 F.2d 942 (7th Cir. 1983). Second, Baltimore seeks ownership without temporal limitation. *Cf. City of Oakland* v. *Oakland Raiders,* 32 Cal. 3d 60, 646 P.2d 835 (1982). Finally, even if the Club were correct and Baltimore eventually becomes no more than a lessor of a new franchise owner, there still would not be a single stake. Baltimore's interest would arise by virtue of a lease of Baltimore's Memorial Stadium to be executed in the future. CIB's interest would still arise from the lease of the Hoosier Dome which it and the Club have already signed. Because the interests of the parties would not arise by virtue of the same obligation, this scenario also fails the jurisdictional test of 28 U.S.C. § 1335(a).

> whether the eminent domain action was properly brought under the Maryland constitution and laws, the United States Constitution and general principles of eminent domain.

(Brief of Plaintiff-Appellee, Indianapolis Colts, filed June 18, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at 31 n.12) The Club therefore concedes that if the district court were to conclude that Baltimore's action "was properly brought," Baltimore would be allowed to proceed with its condemnation suit in Maryland, CIB's claims notwithstanding. The lease agreement would have no bearing on the resolution of Maryland eminent domain issues, and no determination of CIB's rights under the lease agreement would result from resolution of those issues in this action. The "conflicting" claims that the Club purportedly seeks to avoid would not be resolved, and the purpose of interpleader would not be served. The condemnation suit would go forward, and the lease agreement would continue in force, subject to the escape clauses. All that the Club would have gained would have been the opportunity to have a "friendly" forum in Indiana decide issues of Maryland eminent domain law. As such, interpleader would have been transformed into an instrument promoting judicial inefficiency. The Court of Appeals recognized the Club's improper motivation and ordered the complaint dismissed. (A-2, 12-14)

II. The Decision Below is in Complete Accord with the Decisions of this Court and the Other Circuit Courts of Appeals

The Club contends that this Court should review the Seventh Circuit's holding because it supposedly conflicts with the interpretation given to the interpleader statute by other courts. The Club attempts to manufacture a conflict by mischaracterizing the Seventh Circuit's opinion as requiring claims that are identical or of common origin and by misconstruing the allegedly "conflicting" decisions. No such conflict exists.

The Seventh Circuit's holding that federal interpleader jurisdiction requires "adverse claimants to a particular fund" is in complete accord with the decisions of this Court and the other circuits. (A-3) In *State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523 (1967), this Court expressly held that federal interpleader jurisdiction is limited to conflicting claims that can be satisfied from a single, identifiable fund. The Court rejected the argument that the interpleader statute creates jurisdiction to adjudicate claims unrelated to the impleaded stake. The Court thus held that because the impleaded fund defined the boundaries of the lower court's jurisdiction, the plaintiff's attempt in the same suit to quiet claims not directed at the fund itself fell outside of that jurisdiction. *Id.* at 534-36. The Court stressed that interpleader was not intended to act as a general "bill of peace." *Id.* at 535. Moreover, it admonished that interpleader should not be used to "strip truly interested parties of substantial rights—such as the right to choose the forum in which to establish their claims . . . ." *Id.* at 534. Yet, this is precisely what the Club has attempted to do. As the Seventh Circuit observed, there can hardly be "any other motive for this action" than "to shift [Baltimore's condemnation] lawsuit to [the Club's] new home ground, by using the interpleader statute to get personal jurisdiction of [Baltimore] there, which they could not otherwise get." (A-20-21) The Club should not be allowed to force Baltimore to litigate Maryland condemnation questions in Indianapolis.

The other cases cited by the Club likewise are not in conflict with the Seventh Circuit's decision. Each involved claims to a single stake. For example, in *Sanders* v. *Armour Fertilizer Works,* 290 U.S. 190, 199 (1934), each of two insurance companies was "claiming the proceeds of [insurance] policies to the exclusion of the other." Indeed, the Club admits that the conflicting claims in *Sanders* were asserted against a single stake, insurance proceeds: "The insurance companies were thus faced with a contract claim by Sanders to *the money* and an in rem, lien-type garnishment claim by

Armour to *the money.*" (Petition 15-16; emphasis added) Here, in contrast, CIB makes no claim to the franchise itself; it seeks the performance of the Club's obligations under the lease agreement.

Similarly, in *Holcomb* v. *Aetna Life Insurance Co.*, 228 F.2d 75 (10th Cir. 1955), and *Edner* v. *Massachusetts Mut. Life Ins. Co.*, 138 F.2d 327 (3d Cir. 1943), insurance companies filed interpleader actions to resolve adverse claims to the proceeds of insurance contracts. In *Holcomb*, one group attempted to cancel an annuity contract whereas another attempted to keep the policy in force. 228 F.2d at 80-81. In *Edner*, one party claimed the cash surrender value of a life insurance policy whereas the other attempted to keep the policy in force. 138 F.2d at 328. Thus, the adverse claimants in these cases were contesting their rights to a single, identifiable fund. Accordingly, these cases are not in conflict with the decision below.

Indeed, contrary to the Club's argument, the courts have unanimously required the existence of conflicting claims to a single, identifiable stake before asserting interpleader jurisdiction. *See Libby, McNeill, & Libby* v. *City National Bank*, 592 F.2d 504 (9th Cir. 1978); *General Atomic Co.* v. *Duke Power Co.*, 553 F.2d 53 (10th Cir. 1977); Gaines v. *Sunray Oil Co.*, 539 F.2d 1136 (8th Cir. 1976); *General Electric Corp.* v. *Grubbs*, 447 F.2d 286 (5th Cir. 1971), *rev'd on other grounds*, 405 U.S. 699 (1972); *Trowbridge* v. *Prudential Insurance Company of America*, 322 F. Supp. 190 (S.D.N.Y. 1971). For example, in *Libby, McNeill, & Libby, supra*, allegations that plaintiff faced conflicting claims based upon its separate contractual relationships with numerous claimants were held jurisdictionally deficient under § 1335. Although the Ninth Circuit recognized that multiple liability was possible, it held that the statute

> is designed to protect the stakeholder from such liability only when based upon the particular fund proffered by the

> interpleader plaintiff, or put another way, "*when only a single obligation is owing.*"

592 F.2d at 509, quoting *Trowbridge* v. *Prudential Insurance Company of America, supra,* 322 F. Supp. at 192 (emphasis in original).

Thus, the Club's claim of a conflict among the circuits is spurious. The cases upon which the Club relies are consistent with the Seventh Circuit's decision in this case, and no conflict exists.

III. The Court of Appeals Correctly Determined that the Club Has no Reasonable Fear of Double Liability or Vexatious Litigation

In addition to holding that Baltimore and CIB do not seek the same stake, the Court of Appeals ruled that the Club did not meet the equitable requirements for interpleader jurisdiction because it had no real fear of suit by CIB:

> Because the sole basis for equitable relief to the stakeholder is the danger of exposure to double liability or the vexation of conflicting claims, *Texas* v. *Florida,* 306 U.S. at 406, the stakeholder must have a real and reasonable fear of double liability or vexatious, conflicting claims to justify interpleader. Even assuming that Baltimore and the CIB are fighting over the same stake, the Colts do not have a reasonable fear of double liability or vexatious claims here.

(A-6; citations omitted) The court found that the Club had "specifically contracted" in the lease agreement to insulate itself from suit by CIB and that any pretended fear of such a suit was "unreasonable." (A-6-8) This alternative ground constitutes a legally correct and factually unassailable basis for the court's decision.

The Club knew that Baltimore would seek to condemn the franchise and therefore insisted that CIB agree to various escape clauses so that the Club could bail out of its obligations to CIB with impunity. The lease agreement records that the

parties "acknowledged," "recognized" and "contemplated" the imminence of Baltimore's suit, and the Seventh Circuit specifically held that the Club and CIB signed the lease knowing that Baltimore's suit was forthcoming. (A-6, 19)

Based on this knowledge, the Club extracted no fewer than five options to cancel the lease agreement for litigation contingencies. It has or had the power to terminate the lease agreement (a) 30 days after Baltimore's condemnation suit was filed; (b) 90 days after such filing[10]; (c) six months after a court order prohibiting the exhibition of home games in the Hoosier Dome has been in effect[11]; (d) upon entry of a final

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[10] The 30-day and 90-day options are set forth in Paragraph 21.6(a)(i) of the lease agreement, which provides in part:

> (i) If any of the above occur within ninety (90) days of the date of this Agreement, the Club shall give the Board notice in writing, within five (5) days after Club has notice of the occurrence thereof. Club shall then have a thirty (30) day period ("preliminary decision period") within which to notify Board of its preliminary decision as to whether it will transfer the Franchise and play its home games at the Stadium. During this preliminary decision period, the Board's obligations to incur expense for the construction of the Complex (as set forth in Paragraph 12.2(c)) shall be suspended. If during this period, Club decides not to transfer the Franchise and play its home games at the Stadium, this Agreement shall terminate and the parties shall have no further rights or duties hereunder.
>
> During this preliminary decision period, the Club may request an additional sixty (60) day period ("final decision period") within which to make a final decision as to whether to transfer the Franchise and play its League games at the Stadium. During this final decision period the Board's obligations for the construction of the Complex (as set forth in Paragraph 12.2(c)) shall remain suspended. If during this final decision period, the Club decides not to transfer the Franchise and play its home games at the Stadium, this Agreement shall terminate and the parties shall have no further rights or duties hereunder.

[11] Paragraph 24.2 of the lease agreement provides:

> In the event that any games contemplated by this Agreement cannot be played as provided herein as the result of any

(Footnote continued on following page)

unappealable order requiring home games to be played elsewhere (A-7); or (e) upon entry of a final unappealable order of condemnation. (A-7) In its complaint, however, the Club failed to disclose any of its contractual options for avoiding litigation with CIB. Before the Seventh Circuit, the Club argued that only the final option was available and contended it would be in limbo for "years" awaiting a final order of condemnation. (Petition for Rehearing of Plaintiff-Appellee Indianapolis Colts, filed August 24, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at 9) Before this Court, however, the Club has dropped that argument and now concedes that it also has an option to terminate the lease agreement upon the entry of a final unappealable order that it play its home games elsewhere. (Petition 18-21) Although the Club evidently believes that its ever-changing interpretation of the lease agreement serves its litigation strategy, no reasonable interpretation justifies the Club's alleged fear of suit by CIB.

The unambiguous language of the lease agreement shows that the Club has amply protected itself from contractual liability to CIB. Yet, before the ink on the lease agreement was dry, the Club filed this action alleging it had no options whatsoever and thereby obtained a restraining order shutting down Baltimore's condemnation suit. Rather than exercising its 30-day or 90-day options at the outset of this litigation, the

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(Footnote contined from preceding page)

> municipal, state, federal or other statute, judgment, order, rule, regulation, ordinance, action, restriction or proclamation, or *in the event that the playing of any such game should be restrained or enjoined by any court* or administrative body, Ratable Amendment, as provided for in Paragraph 24.5 hereof, shall occur *and the same continues for more than six months, Club may in its sole discretion at any time thereafter while such conditions continue terminate without penalty or payment whatsoever* upon thirty (30) days prior written notice to Board and thereupon this Agreement shall cease, terminate and be of no further force or effect in the same manner as if the termination date set forth in such notice were the date herein specifically fixed for the expiration of the Term of this Agreement. (emphasis added)

Club falsely contended it had no such protection.[12] The Club can still walk away from the lease agreement under its six month option, but it now argues for the first time that the option is not available, an interpretation directly contrary to language which the Club had so carefully drafted for its own protection. (Petition 8 n.2)

Thus, the Club simply ignores or grossly misconstrues the escape clauses of the lease agreement to create the illusion of conflicting claims and threatened litigation. The Court of Appeals, having correctly determined that the Club has never been under any real threat of suit by CIB, also divined the Club's motivation: forum-shopping under the guise of interpleader. Although the Seventh Circuit found it unnecessary to determine whether the Club had contrived CIB's lease claims in order to create interpleader jurisdiction, it seemed to the court "quite likely" that "this suit was brought in bad faith." (A-8, 22) Consequently, the Club's complaint was properly dismissed.

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[12] The Seventh Circuit properly concluded that if indeed the Club faces conflicting claims, such a predicament is of its own doing. (A-20) Having signed the lease agreement on the eve of the condemnation suit and then having refused to exercise its options to escape its obligations under the agreement, the Club is clearly not entitled to invoke the equitable jurisdiction of the court with a sham interpleader action.

CONCLUSION

For the foregoing reasons, respondents the Mayor and City Council of Baltimore respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

EDWIN C. THOMAS, III
(Counsel of Record)
JOHN R. MYERS
DENNIS P.W. JOHNSON
DAVID M. NOVAK
MICHAEL J. ABERNATHY
BELL, BOYD & LLOYD
Three First National Plaza
70 West Madison Street
Suite 3200
Chicago, Illinois 60602
(312) 372-1121

Attorneys for Respondents
Mayor and City Council
of Baltimore

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